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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/858,447	05/17/2001	Dominique Gagnon	15079-1 US GH/ch	2498
20988	7590	12/18/2003	EXAMINER	
OGILVY RENAULT 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA			CROSS, LATOYA I	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 12/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/858,447	Applicant(s) GAGNON ET AL.	
	Examiner LaToya I. Cross	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>10-31-03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Canada on May 18, 2000. It is noted, however, that applicant has not filed a certified copy of the Canadian application as required by 35 U.S.C. 119(b).

Election/Restrictions

2. Applicant's election without traverse of Group I, claims 1-11 in the paper dated October 31, 2003 is acknowledged. Applicant's cancellation of claims 12-20 is acknowledged.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,113,858 to Tang et al.

Tang et al disclose a monitor and method for continuously measuring concentrations of analyte in pool water. Tang et al disclose collecting a sample of pool water in a sampling cavity (80), allowing an indicator/reagent to react with the molecules in the pool water and reading the color intensity of the indicator with a light source and optical detector (col. 2, lines 55-67). Specifically, with respect to claim 1, Tang et al disclose collecting a pool water sample into the optical chamber (sampling cavity 80). A reagent (indicator material 79, 88) is added to the sampling cavity. The reagent is one that will change colors after reacting with ions in the pool water (col. 4, lines 46-60). The color intensity, from the reaction of the indicator with ions in the pool water, is read by the light source (62) and detector (92). The transmission intensity of the indicator is directly related to the concentration of ions in the pool water (col. 5, lines 13-15). The monitor is calibrated with known standard. The analytes to be determined include pH measurements and chlorine concentrations, as recited in claims 3 and 10 (col. 2, lines 13-16). With respect to claim 5, Tang et al teach using the information obtained from the light source and detector to determine the amount of additional chemicals needed to balance the quality of the water, liquid or environment (col. 6, line 66 - col. 7, line 1. With respect to claim 7, Tang et al teaches that the monitor allows continuous (repeated) measurements of levels of chemicals in pool water to be determined. The reference further discloses a red LED (alarm) to inform the user when the levels of chemical need to be replenished. With respect to claims 4 and 11, Tang et al disclose that the monitoring is an automatic, continuous process that is run and controlled by a microprocessor (40). The microprocessor would serve as a computer to run the program necessary in carrying out the process.

Tang et al differ from the instant invention in that the reference does not specifically disclose calibrating the monitor with a sample of pool water that does not contain the indicator.

Art Unit: 1743

However, Tang et al do teach using a series of known values corresponding to the known chemical concentrations that will be stored in the memory of the microprocessor (40). It would have been obvious to one of ordinary skill in the art to use the actual pool water as the calibration sample because such would assure that any differences in the color intensity taken when the indicator is present was actually due to the reaction of indicator with ions in the water and not some other factor. In using the pool water as the calibration sample, the accuracy of the test results can be authenticated.

With respect to claims 2 and 9, Tang et al do not specifically teach rinsing between steps, however, it would have been obvious to rinse the optical chamber between steps to make sure that no leftover indicator or other contaminants are present in the chamber when the tests are performed. In doing so, the possibility of false positives is alleviated.

Therefore, for the reasons set forth above, Applicant's claimed invention is deemed to be obvious, within the meaning of 35 USC 103 in view of the teachings of Tang et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 703-305-7360.

The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. The Examiner is scheduled to relocate on December 17, 2003. If Applicants are unable to reach the Examiner at the above number, please attempt to reach the Examiner at (571) 272-1256.

Application/Control Number: 09/858,447


Page 5

Art Unit: 1743

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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December 11, 2003


Jill Warden
Supervisory Patent Examiner
Technology Center 1700